THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 5993 of 2006

O r d e r:

The petitioner is a District Manager with the respondents-Food Corporation of India. He is due to retire in the month of September, 2006. It is his case that in a span of two years, he has been transferred to two stations, namely Mangalore and Shimoga in Karnataka, and on his request, he was transferred to Kakinada, where he is working as Area Manager. While so, it is his case that respondent No. 1 issued proceedings dated 22.03.2006, transferring him to Hyderabad. It is this transfer order, which the petitioner has called in question in this writ petition.

Heard the learned Senior Counsel, Sri. B. Prakash Reddy, for the petitioner and the learned Senior Counsel Sri. E. Manohar, for the respondents-Food Corporation of India.

The learned Senior Counsel for the petitioner submits that the petitioner is at the fag end of his service, he is due to retire in the month of September, 2006. He submits that as per Guideline No.17 of the Guidelines framed by the Corporation in relation to transfers, and communicated vide proceedings dated 21.11.2002, requests from employees, who are due for retirement within two years, for transfer to their own State/Town or other stations where they want to settle down after retirement, may be considered by competent authority. Though the respondents on the request of the petitioner transferred him from Shimoga in Karnataka to Kakinada in Andhra Pradesh, they have again transferred the petitioner to Hyderabad vide proceedings dated 22.03.2006, which is illegal and arbitrary. He thus prayed for appropriate directions.

The learned Senior Counsel for the respondents-Corporation submitted that transfer is an incidence of service and the transfer has been transferred on administrative exigencies, and this is evident from the impugned order of transfer itself. He submitted that the guidelines issued by the respondents for structuring the discretion in matters of transfers, relied upon by the petitioner, are not legally enforceable.

Though on the request of the petitioner, he was transferred from Shimoga in Karnataka to Kakinada in Andhra Pradesh, instructions were received from the Head Quarters not to post the petitioner in sensitive posts, and inasmuch as the post now held by the petitioner, is a sensitive post, he has been transferred to a non-focal and non-sensitive post, and no exception can be taken thereto. In support of his submissions, he placed reliance on the judgment of the apex Court in **Union of India v. S.L. Abbas** and on the judgment dated 14.02.2006 of a Division Bench of this Court in W.A. No. 132 of 2006.

No doubt, the petitioner is due to retire in the month of September, 2006, and at his request, he has been posted to Kakinada, but that by itself is not a ground for the respondents not to transfer him to another place, and more so when it is the specific case of the petitioner that he has been transferred due to administrative exigencies. Though the petitioner contends that having regard to Guideline No. 17 of the Guidelines framed by the Corporation in relation to transfers, communicated vide proceedings dated 21.11.2002, his request for transfer to the place of his choice has to be considered by the competent authority, the fact remains, they are merely guidelines issued to structure the discretion of the public authority in the matter of transfers, and they in no way, confer on the petitioner any legally enforceable right. This apart, transfer is an incidence of service, and this Court normally, would not interfere with such transfer orders, unless it is shown that the transfer orders are fraught with *mala fides* or have been issued in violation of the statutory provisions. In this context, a reference be made to the judgment of the apex Court in **Union of India v. S.L. Abbas**, wherein it has been held:

> Guidelines issued by the Government – Transfer of Government employee – Order made without following guidelines – Cannot be interfered with by Court unless it is vitiated by mala fides or is made in violation of statutory provision.
>
> While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee, a legally enforceable right. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

Be that as it may, in the very guideline, on which the petitioner placed reliance, it is stated that the employees whose requests are considered, on their posting, shall not be posted on sensitive seats as may be determined by the competent authority from time to time, and it is the specific case of the respondents, and in fact, is evident from the reports received in sealed covers from the Vigilance

Division, wherein the Vigilance Division of the Corporation, having regard to the vigilance profile, has advised the respondents to shift the petitioner to a non-sensitive post, and inasmuch as the post now held by the petitioner is said to be a sensitive post, the respondents have shifted him to Hyderbad, which is said to be a non-sensitive post, and no exception can be taken thereto, and more so when such transfer is in tune with Guideline No.17, on which the petitioner placed heavy reliance, for his retention at the present place of posting.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 25th April, 2006.

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